REMARKS

Applicants respectfully request reconsideration of the above-identified application in view of the following remarks. Applicants request entry of this amendment because the amendment places the pending claims in condition for allowance or in better condition for appeal.

Status of Claims

Claims 1, 8, 17, 20 and 23 have been amended. Claims 1-25 are pending in this application. It is respectfully submitted that no new matter has been added.

Telephone Interview

Applicants thank Examiner Sol for the telephone interview held August 1, 2008 with Caleb Pollack, reg. no. 37,912. During the interview, the undersigned argued that claim 1, as a representative claim, was not made obvious by US Published Patent App. 2004/0029612 ("Gorsuch") and U.S. Pat. No. 6,898,198 ("Ryan"). The Examiner disagreed. No agreement was reached.

Claim Rejections

The Examiner rejected claims 1-3, 6-12, and 15-25 under 35 U.S.C. § 103 as being unpatentable over US Published Patent App. 2004/0029612 ("Gorsuch") in view of U.S. Pat. No. 6,898,198 ("Ryan"). Applicants respectfully request that the rejection of claims 1-3, 6-12, and 15-25 under 35 U.S.C. § 103 as being unpatentable over US Gorsuch in view of Ryan be withdrawn in view of the foregoing amendments and the remarks that follow.

Amended independent Claim 1 includes, *inter alia*:

> scanning ... the scanning comprising *iteratively*:
>   receiving a packet on the first channel;
>   determining if the received packet is an informational packet;
>   ending the scanning of the first channel and joining the first access point if the received packet is an informational packet;
>   determining information regarding the first channel from the received packet if the received packet is not an informational packet; and
>   *updating at least one statistic describing the first channel* based on the information; and
> *after the at least one statistic is updated for a plurality of packets*, stopping scanning of the first channel and scanning a second channel ... *if* the at least one statistic indicates the first channel is not desirable ...

Claims 8, 17, 20 and 23, as amended, include different limitations, but, for the purposes of the arguments presented below, include limitations that are similar to those discussed below with respect to claim 1.

Neither Gorsuch nor Ryan include these limitations. For example, neither of these references gather statistics based on an iterative receipt of packets.

Ryan's specification includes the word "iterations" (Col. 9, line 38), but this iteration is an iteration down a list of possible data rates, where the next lower data rate is chosen if "the remote node does not successfully receive the response." (Col. 9, lines 34-35). This iteration is not a repetition of a process where a packet is received, information is determined from the packet, and a statistic is updated. The EVM discussed in Col. 9 and Table 2 of Ryan is not a "statistic [] updated for a plurality of packets" as required by Applicants' claims 1, 8, 17, 20 and 23, as amended, (see Col. 9, lines 28-29, where EVM is extracted and used for each packet, but not tracked cumulatively).

Gorsuch does not include any iterative process. In particular, Gorsuch does not include an iterative process, where each incoming packet is *both* checked to see if it is an "informational packet" and analyzed to produce a statistic (Claim 1 for example recites "receiving a packet ...; determining if the received packet is an informational packet; ... determining information regarding the first channel from *the* received packet if the received packet is not an informational packet"). Gorsuch describes listening for traffic, and switching if there is no traffic (Paragraph 71) as an alternate embodiment to detecting a probe response ("Yet another alternative ....", Paragraph 71).

As discussed, Gorsuch does not perform both listening for a probe response and, at the same time, listening for the lack of activity – in Gorsuch these are separate embodiments. Thus, Gorsuch lacks an iterative process where listening for an informational packet *and* gathering statistics on the *same* packets that are analyzed to determine whether or not they are informational are both performed.

Claims 1, 8, 17, 20 and 23, as amended, describe "scan[ning] a first channel from a set of channels, wherein the first channel is associated with a first access point," gathering a statistic describing this channel, and switching to scanning a second channel associated with a second access point if the statistic indicates the first channel is not desirable.

Ryan discusses "statistics" in Col. 10, lines 31-59, and Ryan discusses reducing a data rate based on a PER in Col. 9, lines 50-55, but these statistics are used to alter a data rate, and are kept by one access point (AP) for several stations. (Col. 9, lines 34-35). Thus Ryan's statistics, as described in this section, are kept *by* one access point, rather than being gathered, by another unit, for a channel associated with an access point. Ryan's statistics in this section are used to set a data rate. Lastly, Ryan's statistics in this section are not gathered from packets first analyzed to determine if they are "informational" packets.

Gorsuch simply switches its method of communication if, in one mode of operation, no traffic is received. (See Gorsuch, para. 71). As the Examiner notes in the Office Action, on page 4, Gorsuch does not gather information on a channel.

Neither Gorsuch nor Ryan stop scanning a first channel *if* a statistic indicates the first channel is not desirable:

> stopp[ing] scanning of the first channel and scanning a second channel ... *if* the at least one statistic indicates the first channel is not desirable ... (Applicants' claims 1, 8, 17, 20 and 23, emphasis added).

Ryan does not include this limitation. For example, in Col. 9, lines 34-40 of Ryan, Ryan describes iterating down a list of possible data rates, and not communicating at all if a remote node does not receive a response sent from a first node. (Ryan, Col. 9, line 34-36). This does not describe stopping scanning a first channel and scanning a

second channel if a statistic indicates the first channel is not desirable. Ryan does not switch channels, but rather simply stops on one channel. Ryan does not base this on a "statistic [] updated for a plurality of packets" but rather whether a remote node receives a communication. (Ryan, Col. 9, line 34-36). In this section of Ryan a node sends a packet to a remote node, and does not communicate with that remote node if the remote node does not receive the response. This is different from a node receiving packets, and analyzing the packets for 1) whether or not the packets are informational; and 2) information on the packets, if they are not informational.

Gorsuch switches channels, in one embodiment, if no beacon is received (Para. 70), and, in another embodiment, if no traffic is heard (Para. 71).

Ryan's statistical gathering cannot be combined with Gorsuch to produce the inventions of claims 1, 8, 17, 20 and 23, as amended. As discussed, Gorsuch lacks at least an iterative process and updating a statistic describing a channel based information received from a packet. To add Ryan's statistic gathering, shown in Col. 10, lines 31-59, would result in a system that did not have at least these functions:

> iteratively check frames to see if they are informational and, if they are not, updating statistics based on those same frames;
> after at least one statistic is updated for a plurality of packets, stop scanning of the first channel and scan a second channel *if* the statistic indicates the first channel is not desirable.

Gorsuch scans a second channel if no beacon response is received or, in a different embodiment, if no traffic is received. Ryan does not switch channels (each channel associated with an access point) based on channel desirability, but rather alters a data rate based on a statistic. Ryan stops communicating with a remote device if the remote device fails to receive a packet, not based on a statistic. Neither Ryan nor Gorsuch switch channels if a statistic indicates a channel is not desirable.

Each of claims 2, 3, 6, 7, 9-12, 15, 16, 18, 19, 21, 22, 24 and 25 depends from one of amended independent Claims 1, 8, 17, 20 and 23 and therefore includes all the features of one of these independent claims as well as further distinguishing features. Thus, claims 2, 3, 6, 7, 9-12, 15, 16, 18, 19, 21, 22, 24 and 25 are likewise allowable. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of

claims 1-3, 6-12, and 15-25 under 35 U.S.C. § 103 as being unpatentable over US Gorsuch in view of Ryan.

The Examiner rejected claims 4 and 13 under as being under 35 U.S.C. § 103(a) as being unpatentable over Gorsuch in view of Ryan and further view of U.S. Publication No. 2006/0092888 ("Jeong"). Applicants respectfully request the withdrawal of the rejection of claims 4 and 13 under as being under 35 U.S.C. § 103(a) as being unpatentable over Gorsuch in view of Ryan and further view Jeong in view of the foregoing amendments and the remarks that follow.

Each of claims 4 and 13 depends from one of amended claims 1 and 8, which as discussed above are allowable over Gorsuch and Ryan. Jeong does not cure the deficiencies of Gorsuch and Ryan. Thus, claims 4 and 13 are likewise allowable.

Therefore, Applicants respectfully request that the Examiner withdraw the rejection of 4 and 13 under as being under 35 U.S.C. § 103(a) as being unpatentable over Gorsuch in view of Ryan and further view Jeong.

The Examiner rejected claims 5 and 14 under as being under 35 U.S.C. § 103(a) as being unpatentable over Gorsuch in view of Ryan and further view of U.S. Publication No. 2005/0073979 ("Barber"). Applicants respectfully request the withdrawal of the rejection of 5 and 14 under as being under 35 U.S.C. § 103(a) as being unpatentable over Gorsuch in view of Ryan and further view of Barber in view of the foregoing amendments and the remarks that follow.

Each of claims 5 and 14 depends from one of amended claims 1 and 8, which as discussed above are allowable over Gorsuch and Ryan. Barber does not cure the deficiencies of Gorsuch and Ryan. Thus, claims 5 and 14 are likewise allowable.

Therefore, Applicants respectfully request that the Examiner withdraw the rejection of 5 and 14 under as being under 35 U.S.C. § 103(a) as being unpatentable over Gorsuch in view of Ryan and further view Barber.
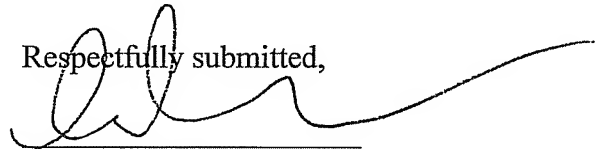
CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the pending claims distinguish over the prior art of record and are in condition for allowance. Favorable consideration and passage to issue are therefore respectfully requested.

The Examiner is invited to telephone the undersigned to discuss any still outstanding matters with respect to the present application.

No fees are believed to be due in connection with this paper. However if any such fees are due, please charge any fees associated with this paper to deposit account No. 50-3355.

Respectfully submitted,

Caleb Pollack
Attorney for Applicant(s)
Registration No. 37,912

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Pearl Cohen Zedek Latzer, LLP.
1500 Broadway, 12th Floor
New York, NY 10036
Phone: (646) 878-0800
Fax: (646) 878-0801